

CHEVRON OIL COMPANY

IBLA 77-54 Decided February 4, 1977

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting an application for a geothermal resources lease NM 023570.

Affirmed.

1. Geothermal Leases: Applications: Generally

Where an application for a geothermal resource lease is filed for all the land available within a surveyed or protracted section, as required by regulation, but the application is then reduced to less than all such land by voluntary withdrawal, the offer is properly rejected.

APPEARANCES: W. M. Balkovatz, Esq., for Chevron Oil Company.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Chevron Oil Company has appealed from a decision dated October 21, 1976, of the New Mexico State Office, Bureau of Land Management, rejecting in its entirety its application to lease for geothermal resources certain lands on the ground that the offer did not include all available lands within a surveyed or protracted section.

Chevron's application to lease for geothermal resources NM 23570 was filed on September 12, 1974, for All Sec. 27, T. 26 S., R. 20 W., N.M.P.M., W 1/2, SE 1/4 Sec. 5, Lots 1, 2, 3, 4, E 1/2, E 1/2 W 1/2 Sec. 6, T. 27 S., R. 20 W., N.M.P.M., containing 1,747.70 acres.

On June 23, 1976, a partial withdrawal was filed embracing Lots 1, 2, 3, 4, E 1/2, E 1/2 W 1/2 Sec. 6, T. 27 S., R. 20 W., N.M.P.M., containing 627.70 acres. The lands remaining in the

application were All Sec. 27, T. 26 S., R. 20 W., W 1/2, SE 1/4 Sec. 5, T. 27 S., R. 20 W., N.M.P.M., containing 1,120.00 acres.

By decision dated September 2, 1976, Chevron Oil Company was requested to execute the lease for the S 1/2 N 1/2, S 1/2 Sec. 27, T. 26 S., R. 20 W., N.M.P.M., W 1/2 Sec. 5, T. 27 S., R. 20 W., N.M.P.M., containing 800.00 acres. The application was suspended as to the N 1/2 N 1/2 Sec. 27, T. 26 S., R. 20 W., N.M.P.M., SE 1/4 Sec. 5, T. 27 S., R. 20 W., N.M.P.M., containing 320.00 acres, until a final determination is made concerning the ownership of the geothermal resources. (Stockraising Homestead Entry Lands.)

On October 4, 1976, the lease was returned to the State Office without being executed, together with a partial withdrawal covering the 800.00 acres offered in the lease (S 1/2 N 1/2, S 1/2 Sec. 27, T. 26 S., R. 20 W., N.M.P.M.) In essence, Chevron refused the lease and chose instead to withdraw. The filing of the partial withdrawal left the application with only the 320.00 acres previously suspended. Thus, the S 1/2 N 1/2, S 1/2 Sec. 27, T. 26 S., R. 20 W., N.M.P.M.; W 1/2 Sec. 5, T. 27 S., R. 20 W., N.M.P.M., remained as open and available lands.

As the State Office pointed out, a noncompetitive geothermal lease application must include all available lands within a surveyed or protracted section. 43 CFR 3210.2-1(c). If it describes less the application must be rejected as to any section so deficient. Edward R. Towne, 21 IBLA 304 (1975). Having found appellant's offer as it stood after the withdrawals to be in violation of the regulation, the State Office rejected it.

Appellant contends that the regulation is not in point. It asserts that its application was in compliance with the regulation when it was filed and that there is no regulation prohibiting a partial withdrawal of an application previously filed. It contends that the regulation permitting withdrawal of an application in whole or in part authorizes the action it took.

[1] This argument is without merit. It was raised and disposed of in a similar situation arising under the oil and gas leasing regulations. We look to this regulation because the Department's oil and gas regulations served as a model for the geothermal resources leasing regulations and decisions under the former may be helpful in interpreting the latter. Edward B. Towne, *supra* at fn. 2.

The oil and gas regulation requires that a noncompetitive offer must include not less than 640 acres, with certain exceptions not material here. 43 CFR 3110.1-3. It also permits an offer to be withdrawn in whole or part under essentially the same conditions as a geothermal lease offer. 43 CFR 3110.1-4.

In Halvor F. Holbeck, 63 I.D. 102 (1956), a case arising under an earlier but substantially similar version of the regulation (43 CFR 192.42 (1955)), an oil and gas lease applicant filed an application for 963.81 acres. He then filed a withdrawal which left only 560 acres in the offer. The offer was then rejected for violating the 640 acre requirement. The appellant contended that the regulation required only that an offer must contain 640 acres when filed and that subsequent withdrawals which reduced the acreage to less than 640 acres could be made without violating the regulation. The Department held that such an interpretation would permit a person by a simple ruse to defeat the purpose of the regulation which was to prevent the fragmentation of oil and gas lease offers into such small tracts that administrative and exploitation would be difficult and burdensome.

The decision stated:

An offer for lease remains an offer until it is accepted. During its continuance as an offer it is governed by the regulation in question so far as voluntary acts of the offeror are concerned. If an offeror should file for 640 acres, then withdraw his offer and file a new offer for only a part of the same land, there is no question but that the new offer would be in violation of the regulation. It would be wholly irrational, in the absence of clear words compelling it, to hold that a partial withdrawal of an offer, which has the same effect, is permitted by the regulation.

So here too, the steps taken by appellant would frustrate the policy, expressed in the regulation, of issuing geothermal leases for all available lands in a section. For the same reasons when the offer was reduced by withdrawal to encompass less than all the available land in a surveyed or protracted section it violated the regulation and was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

